

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
 LICENSE COMMUNICATIONS SERVICES,)
 INC.)
)
 Licensee of Industrial/Business Pool (YG) Station)
 WPQF492, Los Angeles County, California)
)
 Petitions for Reconsideration)

ORDER ON RECONSIDERATION AND ORDER PROPOSING MODIFICATION

Adopted: April 13, 2010

Released: April 14, 2010

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This item denies one petition for reconsideration of an order declining to modify the above-captioned license, and grants in part another petition for reconsideration of the same order and proposes to modify the license accordingly. We have before us two petitions for reconsideration of on *Order*¹ of the Wireless Telecommunications Bureau’s Mobility Division (Division), one filed by Mobile Relay Associates (MRA),² and the other filed jointly by James A. Kay, Jr. (Kay) and Comm Enterprises (collectively, Joint Petitioners).³ The *Order* declined to modify the license of License Communications Services, Inc. (LCS)⁴ for Industrial/Business Pool Station WPQF492, Los Angeles County, California, as proposed in the *Order Proposing Modification*.⁵ For the reasons set forth below, we deny the Joint Petitioners’ petition for reconsideration, and grant MRA’s petition in part. Consequently, we propose to modify the license for Station WPQF492 by changing the station class for frequencies 472.9250 MHz and 472.9500 MHz from FB8T to FB6T. We also propose, on our own motion, to change the station class for frequencies 472.4250 MHz, 472.4500 MHz, and 472.7000 MHz.

2. *Background.* In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kHz “offset” channels in the 470-512 MHz frequency band.⁶ That consensus is embodied in the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel interference in the

¹ License Communications Services, Inc., *Order*, 24 FCC Rcd 3228 (WTB MD 2009) (*Order*).

² Mobile Relay Associates, Petition for Reconsideration (filed Apr. 20, 2009) (MRA Petition).

³ Comm Enterprises, LLC and James A. Kay, Jr., Petition for Reconsideration (filed Apr. 20, 2009) (Joint Petitioners Petition).

⁴ LCS filed a consolidated opposition to the two petitions for reconsideration. Opposition of License Communications Services, Inc. (LCS) to Petition for Reconsideration Filed by Mobile Relay Associates (MRA) and Petition for Reconsideration Filed by Comm Enterprises and James A. Kay, Jr. (collectively “Comm”) Against “Order”, DA 09-617 (filed Apr. 24, 2009) (Opposition). MRA and the Joint Petitioners filed replies.

⁵ License Communications Services, Inc., *Order Proposing Modification*, 22 FCC Rcd 17596, 17598 ¶ 8 (WTB MD 2007) (*Order Proposing Modification*).

⁶ See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

470-512 MHz band using the interference criteria of TIA/EIA/TSB-88⁷ (TSB-88).⁸ The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability.⁹

3. In 2000, the Commission granted LCS's application for Station WPQF492.¹⁰ The license authorizes operation of centralized trunked temporary base stations (station class code FB8T) and associated mobile units on 12.5 kHz "offset" frequency pairs 472/475.4250 MHz, 472/475.4500 MHz, 472/475.7000 MHz, 472/475.9250 MHz, and 472/475.9500 MHz.

4. In 2004, MRA requested that the license be modified by deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz, on the grounds that Station WPQF492 did not provide the required protection to its operations on adjacent frequency pair 472/475.9375 MHz under Call Sign WIL648.¹¹ In the alternative, MRA requested that LCS's license be modified by changing the station class code to permit only decentralized trunked (station class code FB6T) or conventional operations, which would require LCS to monitor the frequencies before transmitting.¹²

5. In 2007, the Division proposed to modify LCS's license for Station WPQF492, pursuant to Section 316 of the Communications Act of 1934, as amended,¹³ by deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz.¹⁴ The Division noted that it had been sufficient as an initial matter for LCS's frequency coordinator to coordinate the application based only on the center coordinates of the authorized service area, but that a more detailed analysis is required in the event of a complaint from an incumbent,¹⁵ and that the Division's independent analysis determined that LCS's application did not satisfy the TSB-88 criteria.¹⁶ The Division concluded that deleting frequency pairs 472/475.9250 MHz and 472/475.9500 MHz would serve the public interest by precluding harmful interference to Station WIL648, and would not unduly disrupt the operations of LCS, which is authorized on other channels under this and other licenses in the area.¹⁷

6. The Joint Petitioners requested that the Division further modify LCS's license by deleting frequency pairs 472/475.4250 MHz, 472/475.4500 MHz, and 472/475.7000 MHz, because their frequency coordinator's analysis showed that operation on those frequencies would degrade the service

⁷ See Telecommunications Industry Association/Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA/TSB-88), *Wireline Communications System – Performance in Noise and Interference-Limited Situations – Recommended Methods for Technology-Independent Modeling, Simulation, and Verification* (January 1998).

⁸ See Filing Freeze to Be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)).

⁹ See LMCC Consensus, Attachment at 2.

¹⁰ FCC File No. D130079.

¹¹ See Request to Initiate Modification Proceedings (filed Mar. 23, 2004).

¹² See *id.* at 5-6.

¹³ 47 U.S.C. § 316.

¹⁴ See *Order Proposing Modification*, 22 FCC Rcd at 17598 ¶ 8.

¹⁵ See *id.* at 17598 n.18. Thus, the Division did not conclude, as LCS now suggests, see Opposition at 1, that the coordination was not defective, but only that it was *prima facie* sufficient, pending more detailed review.

¹⁶ See *Order Proposing Modification*, 22 FCC Rcd at 17598 ¶ 7.

¹⁷ See *id.* at 17597 ¶ 4, 17598 ¶ 7.

area of certain Kay stations by over five percent.¹⁸ LCS protested the Division's proposed modification, and opposed the Joint Petitioners' request for further modification.¹⁹

7. In 2009, the Division declined to modify LCS's license as proposed, and denied the Joint Petitioners' request for further modification. It noted that the cumulative effect of granting the Joint Petitioners' modification request and MRA's modification request would be to revoke LCS's license entirely.²⁰ The Division concluded that, given that neither MRA nor the Joint Petitioners had alleged actual interference from LCS's operations, such action was not warranted under the circumstances.²¹ It also noted that the Joint Petitioners filed their modification request more than seven years after LCS's license was granted, and did not appear from the record to have felt aggrieved by the LCS license until after the release of the order proposing to modify the license with respect to other frequencies pursuant to MRA's modification request.²² The Division did not discuss MRA's alternative request that the license be modified by changing the station class code.

8. In 2010, the Commission held that licenses should not be granted with station class code FB8T, because authorizing temporary base stations anywhere within a licensee's authorized operating area could allow the licensee to expand the contour of its unmonitored operations into areas where it does not have exclusivity, which could result in interference to other licensees.²³ The Commission also stated that existing FB8T authorizations will be renewed with a station class code of FB2T (private, internal systems) or FB6T (for-profit private carriers), as appropriate, which will require those licensees to monitor before transmitting.²⁴ The Commission suggested the individual FB8T licenses can be modified by changing the station class code prior to renewal, if appropriate under the circumstances.²⁵

9. *Discussion. Joint Petitioners Petition.* We deny the Joint Petitioners' petition for reconsideration. As the Division noted, the cumulative effect of granting both modification requests would be to revoke LCS's license; and the Joint Petitioners filed their modification request seven years after LCS's license was granted, did not allege that they had incurred actual interference from LCS's operations, and, indeed, did not appear to find Station WPQF492 objectionable until after the Division proposed to modify the license pursuant to MRA's request.²⁶ Under these circumstances, their

¹⁸ Specifically, Stations WIL343, WIJ362, WIL441, and WQAD395. See Comm Enterprises, LLC and James A. Kay, Jr., Petition for Partial Reconsideration and Request for Further Modification (filed Nov. 1, 2007).

¹⁹ See Protest of License Communications Services, Inc. to Proposed Modification to Delete Frequency Pairs 472/475.9250 MHz and 472/475/9500 MHz from Station WPQF492 (filed Oct. 26, 2007); Opposition of License Communications Services, Inc. (LCS) to Petition for Further Reconsideration by Comm Enterprises and James A. Kay, Jr. (filed Nov. 14, 2007).

²⁰ See Order, 24 FCC Rcd at 3231 n.28 (citing 47 U.S.C. §§ 312, 316).

²¹ *Id.* at 3230-31 ¶¶ 7-9. The Division stated that new requests for modification could be filed in the event of actual interference. *Id.* at 3231 ¶¶ 8-9.

²² *Id.* at 3231 ¶ 9.

²³ See Amendment of Part 90 of the Commission's Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, WP Docket No. 07-100, FCC 10-36, ¶ 20 (rel. Mar. 11, 2010).

²⁴ *Id.* at ¶ 21.

²⁵ *Id.* at n.68.

²⁶ Joint Petitioners now state that they in fact filed a petition for modification of the LCS license in 2003 that the Commission never acknowledged. See Joint Petitioners Petition at 3 n.9. We have no record of receiving any such petition, and the copy attached to the Joint Petitioners Petition bears no Commission date-stamp. We also note that the Joint Petitioners offer no explanation for not mentioning any 2003 filing in their 2007 request. Consequently, they may not rely upon it when seeking reconsideration of the denial of the 2007 request. See 47 C.F.R. § 1.106(c).

modification request was properly denied. The Commission has stated that “[l]icense modification pursuant to Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity,”²⁷ and that the length of time between the grant of the license and the filing of the modification request “is certainly a legitimate question for consideration as part of the public interest, convenience, and necessity inquiry.”²⁸ While there is no absolute time limit on Section 316 modifications, a review of the relevant precedent suggests that extraordinary circumstances are required to delete an improperly coordinated frequency pursuant to a request filed this long after the license was granted.²⁹

10. MRA Petition. We grant MRA’s petition for reconsideration in part. As an initial matter, we disagree with MRA’s contention that the decision not to delete frequency pairs 472/475.9250 MHz and 472/475.9500 MHz from the license for Station WPQF492 was erroneous.³⁰ The Commission has broad discretion to decide whether to modify a license pursuant to Section 316.³¹ We note, however, that after the Division decided not to delete those frequency pairs, it should have considered MRA’s alternative proposal to change the station class code, rather than restricting itself to upholding LCS’s objection to the proposed deletion.³² We now conclude that the best avenue for the resolution of the instant matter is to

²⁷ See Pacific Gas and Electric Co., *Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22767-68 ¶ 16 (2003).

²⁸ See JPJ Electronic Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5515 ¶ 6 (2002). The Joint Petitioners’ assertion that LCS’s application constituted a proposed indirect Section 316 modification of their own licenses of which they were entitled to notice is incorrect. See Joint Petitioners Petition at 6 (citing FCC v. National Broadcasting Co., 319 U.S. 239, 245 (1943); Western Broadcasting Co. v. FCC 674 F.2d 44 (D.C. Cir. 1982); WBEN, Inc. v. FCC, 290 F.2d 743 (D.C. Cir. 1961)). The cited cases demonstrate only that the Joint Petitioners would have had standing to oppose the LCS application if they had filed a timely objection or petition for reconsideration, not that Section 316 entitled them to notice of the filing of the application. See, e.g., Stearns County Broadcasting Co., *Memorandum Opinion and Order*, 71 F.C.C. 2d 412, 413 ¶ 2 (1979).

²⁹ See, e.g., National Science and Technology Network, Inc., *Order*, 24 FCC Rcd 9220, 9221 ¶ 4 (WTB MD 2009) (stating that a modification request filed ten years after license grant would be granted only under extraordinary circumstances, even though the petitioner acquired the neighboring license only three years before filing the request); see also Industrial Telecommunications Association, Inc., *Order of Modification*, 18 FCC Rcd 201, 202 ¶ 3 (WTB PSPWD 2003) (modifying a license to delete a frequency pursuant to a request filed seven years after the license was granted because the frequency was not allocated for Part 90 operations). The longest period between license grant and the filing of a request resulting in deletion of a frequency without extraordinary circumstances appears to be less than five years. See Supreme Radio Communications, Inc., *Order*, 17 FCC Rcd 26139 (WTB CWD 2002).

³⁰ MRA argues primarily that it should not be “punished” for the timing of its protest, because it could not have learned of the grant of LCS’s application sooner because the application was put on public notice, and it is difficult to trace interference caused by temporary-fixed stations. See MRA Petition at 7-9. We note, however, that the Division’s decision not to delete the frequencies as proposed was based only partly on the passage of time, and more on the absence of any allegation of actual interference and the fact that its TSB-88 studies showed a minor amount of impermissible predicted signal degradation (seven percent, instead of the permitted five percent, see *Order*, 24 FCC Rcd at 3229 ¶ 4). We also reject MRA’s suggestion, see MRA Petition at 9-12, that its modification request should, under the circumstances, have been treated as a timely petition for reconsideration. See National Science and Technology Network, Inc., *Order Proposing Modification*, DA 10-368, ¶ 3 (WTB MD rel. Mar. 4, 2010) (rejecting the same argument), *protest pending*.

³¹ Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015, 16043-44 ¶¶ 64-67 (2005).

³² See National Science and Technology Network, Inc., *Memorandum Opinion and Order and Order Proposing Modification*, 25 FCC Rcd 559, 561 n.16 (2010) (*NSTN*) (“After MD concluded that its reasons for denying the modification request were erroneous, it should have addressed the merits of the request, rather than restricting itself to the arguments in MRA’s petition for reconsideration.”) (citing, e.g., S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153 (2001)).

modify the license for Station WPQF492 by changing the station class code for frequencies 472.9250 MHz and 472.9500 MHz from FB8T to FB6T, which would require LCS to monitor the channels prior to transmission.³³ Such a modification would be in the public interest, because LCS will be able to continue its operations, while the potential for interference to MRA will be reduced.³⁴

11. Additional Modification. As noted above, the Commission has decided that all existing FB8T licenses will be renewed with a station class code of FB2T or FB6T, and that individual FB8T licenses may be modified prior to renewal, if appropriate. Given that we are proposing to modify LCS's license for Station WPQF492 to change the station class code for frequencies 472.9250 MHz and 472.9500 MHz from FB8T to FB6T, we believe that it is appropriate and in the public interest also to propose to change the station class for frequencies 472.4250 MHz, 472.4500 MHz, and 472.7000 MHz from FB8T to FB6T, rather than waiting until the license is renewed.

12. *Conclusion and Ordering Clauses.* We conclude, under the current circumstances, that modifying the license for Station WPQF492 would promote the public interest, convenience, and necessity. We grant MRA's petition to the extent indicated above, and propose to modify LCS's license for Industrial/Business Pool Station WPQF492 by changing the station class for frequencies 472.9250 MHz and 472.9500 MHz from FB8T to FB6T. In addition, we propose, on our own motion, to modify the license by changing the station class for frequencies 472.4250 MHz, 472.4500 MHz, and 472.7000 MHz from FB8T to FB6T. In accordance with Section 1.87(a) of the Commission's Rules,³⁵ we will not issue a modification order until LCS has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, LCS must, within thirty days of the release date of this *Order on Reconsideration and Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be mailed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554, Attn: Stana Kimball.³⁶ If no protest is filed, LCS will have waived its right to protest the modification and will be deemed to have consented to the modification.

13. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition For Reconsideration filed by Mobile Relay Associates on April 20, 2009, IS GRANTED to the extent indicated above.

³³ MRA also requests that we afford the LCS license secondary status, so that MRA does not have to protect LCS when transmitting. See MRA Petition at 5 n.5, 12. We do not find that to be necessary. MRA's FB8 operations under Call Sign WIL648 already are free of any requirement to monitor before transmitting. Moreover, LCS is required to monitor before transmitting, it will have to avoid causing harmful interference to other systems. See 47 C.F.R. §§ 90.187(b), 90.403(e), 90.475(a)(5).

³⁴ See, e.g., *NSTN*, 25 FCC Rcd at 561-62 ¶¶ 8-10 (proposing to modify license by changing station class code from FB8 to FB6 so that licensees could share channel); National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 15728, 15731 ¶ 6, 15734 ¶ 17 (WTB PSPWD 2002) (concluding that changing the station class code was a more appropriate modification under the circumstances presented than the requested deletion of frequencies).

³⁵ 47 C.F.R. § 1.87(a).

³⁶ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail, and hand-delivered or messenger-delivered documents. Documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009); FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

14. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Industrial/Business Pool Station WPQF492 held by License Communications Services, Inc., BE MODIFIED by changing the station class for frequencies 472.4250 MHz, 472.4500 MHz, 472.7000 MHz, 472.9250 MHz, and 472.9500 MHz from FB8T to FB6T.

15. IT IS FURTHER ORDERED that this *Order on Reconsideration and Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to License Communications Services, Inc., Attn: Alan Lurya, 18662 MacArthur Blvd., Suite 200, Irvine, CA 92612.

16. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Comm Enterprises, LLC and James A. Kay, Jr. on April 20, 2009, IS DENIED.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau